

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ROGER DALE GODWIN,

Plaintiff,

OPINION AND ORDER

v.

14-cv-368-wmc

RN KATHY, RN BONNIE,
A. FATOKI, SHERIFF CHIP
MIESTER, LT. LANGE # 28 and
J.B. VAN HOLLEN,

Defendants.

Plaintiff Roger Dale Godwin, who is presently incarcerated at the Sauk County Jail in Baraboo, has filed this complaint under 42 U.S.C. § 1983, against several health care providers, the Sauk County Sheriff, the state attorney general and an assortment of correctional officers. Because he has not paid the filing fee, Godwin presumably seeks leave to proceed without prepayment of fees and costs. For reasons set forth briefly below, the court will allow Godwin to proceed *in forma pauperis* with respect to his claims based on allegations of imminent danger, but deny all of his other claims as barred by his status as a serial filer of frivolous lawsuits.

ALLEGATIONS OF FACT¹

¹ In addressing any *pro se* litigant's pleadings, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Godwin's proposed complaint, which lodges an assortment of unrelated claims, is summarized below under this lenient standard. In addition, the court notes that the plaintiff was indicted in this district in May 2013, for sending threatening communications through the mail to other members of the judiciary, including the United States District Judge Barbara Crabb and United States Magistrate Judge Stephen Crocker of the Western District of Wisconsin. *See United States v. Godwin*, 13-cr-51 (W.D. Wis.). While all judges of this court recused themselves from presiding over the criminal case as a matter of policy, I see no basis for my recusal here. On the contrary, I am confident in my ability to fairly and impartially consider the pleadings in this civil action.

1. The Parties

At all times relevant to the complaint, Godwin has been in custody at the Sauk County Jail. The named defendants include two nurses (RN Kathy and RN Bonnie), a physician (Dr. A. Fatoki), Sauk County Sheriff Chip Miester, Lieutenant Lange and State Attorney General J.B. Van Hollen of the Wisconsin Department of Justice. The complaint also purports to lodge claims against sundry other officials, including Sergeant Latsch, Nurse Helen, Deputy Brooks, two inmates (Hancock and Cole), Dodge County District Attorney Kurt Klomberg, the United States Bureau of Prisons and various officers employed by the Wisconsin Department of Corrections at the Wisconsin Secure Program Facility (“WSPF”) in Boscobel, where Godwin was formerly confined.²

2. Claims Against Nurse Kathy, Nurse Bonnie, Nurse Helen, Dr. Fatoki Lieutenant Lange, Sheriff Miester and Van Hollen

On April 18, 2014, Godwin claims he was denied aspirin for an unspecified medical condition that reportedly entails “clotting.” Godwin claims that he was also denied hydrocortisone cream for a rash and dry skin. Several days later, on April 21, Godwin was denied cold medication or a doctor’s appointment for a “bad cold” and cough. He claims further that the nurses and Dr. Fatoki have denied him seizure medication (Depakote) since March 30.

When he filed grievances about his medical care, Lieutenant Lange allegedly threatened to place him in segregation. And when Godwin complained to Sheriff Miester

² These defendants consist of Sergeant John Kussmehl, Sarah Mason, David Gardener and William Brown (the “WSPF defendants”).

and to Van Hollen, neither official intervened on his behalf. Godwin contends, therefore, that he has been denied adequate medical care at the Sauk County Jail.

3. Claims Against Lieutenant Lange

Godwin contends that another officer (Sergeant Latsch) denied him writing paper and an envelope. Godwin alleges that he needed these materials to write to his attorney about being denied medication at the Jail. Godwin claims further that Latsch denied him access to courts.

4. Claims Against Deputy Brooks

Godwin contends that Deputy Brooks failed to protect him from assault by moving him to a different cell when other inmates at the jail threatened to kill him because Godwin is a member of the Aryan Brotherhood. In particular, Godwin told Brooks that he feared for his safety as a result of threats made on April 18, 2014, but Brooks refused to assign Godwin to a different cell.

5. Claims Against Hancock and Cole

Godwin further claims that Hancock and Cole threatened him with harm because of Godwin's racist beliefs and membership in the Aryan Brotherhood. By threatening to put a contract on Godwin's life, he claims that these inmates have violated his rights under the Eighth and Fourteenth Amendments.

6. Claims Against Nurse Kathy, Nurse Helen, Nurse Bonnie, Lieutenant Lange, Sergeant Latsch and Van Hollen

Godwin claims that Nurse Kathy, Nurse Helen, Nurse Bonnie, Lieutenant Lange and Sergeant Latsch have wrongfully charged him a co-pay for receiving medical care at the jail in violation of the “Federal Prisoner Health Care Copayment Act of 2000” and regulations governing health care for prisoners in federal custody. Godwin reportedly also complained to Attorney General Van Hollen, but he did nothing to help. Godwin contends that all of these defendants should be suspended, fired, and prosecuted for failure to comply with the law because the Sauk County Jail has flies and bugs in the shower, and lead paint in the secured housing unit.

7. Claims Against District Attorney Klomberg and the WSPF Defendants

Godwin claims that Dodge County District Attorney Klomberg and the WSPF defendants have harassed, threatened, and retaliated against Godwin by filing criminal charges against him in United States District Court for the Western District of Wisconsin, Case No. 13-cr-51 (W.D. Wis.), and Fond du Lac County Circuit Court Case No. 13CF705. In both cases, Godwin has been charged with sending threatening materials to judges. Alleging violations of his Eighth and Fourteenth Amendment rights, Godwin seeks injunctive relief and a restraining order against the defendants, as well as the Fond du Lac District Attorney’s Office.

8. Claims Against the United States Bureau of Prisons

Godwin claims he filed notice under the Federal Tort Claims Act (“FTCA”) against the United States Bureau of Prisons but has received no response for nearly eight

months. Godwin provides no details about his underlying claim, but maintains that the Bureau of Prisons has breached its duty by failing to respond.

OPINION

As an initial matter, Godwin's case is governed by the Prison Litigation Reform Act of 1996 (the "PLRA"). The PLRA requires a court to screen each complaint and dismiss any portion that is frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for them. *See* 28 U.S.C. § 1915A. Moreover, once an inmate incurs three "strikes" for filing meritless claims, the PLRA further precludes an inmate from bringing a civil action or appealing a civil judgment *in forma pauperis* unless he demonstrates that he is in "imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

Court records confirm that at least three of Godwin's previous lawsuits have been dismissed as legally frivolous, malicious or failed to state a claim upon which relief may be granted. *Godwin v. Sutton*, 05-cv-493-bbc (W.D. Wis. Sept. 12, 2005); *Godwin v. Bridgewater*, 05-cv-bbc (W.D. Wis. Nov. 7, 2005); and *Godwin v. Frank*, 06-cv-489-bbc (W.D. Wis. Sept. 22, 2006). Accordingly, Godwin may proceed *in forma pauperis* only to the extent that his complaint demonstrates an "imminent danger of serious physical injury" pursuant to § 1915(g).

To demonstrate an "imminent danger," an inmate must articulate specific facts showing that a "threat" or risk of physical harm is both "real and proximate." *Ciarpaglini v. Saini*, 352 F.3d 328, 330 (7th Cir. 2003). The risk of serious physical injury must also

exist at the time the complaint is filed. *See id.* Thus, allegations of past harm do not fit within the imminent-danger exception for purposes of proceeding *in forma pauperis*, unless risk of further serious physical injury remains imminent. *See id.* (citing *Abdul-Wadood v. Nathan*, 91 F.3d 1023 (7th Cir. 1996)).

Of the claims Godwin has raised, the only one that arguably implicates an imminent danger of serious physical harm for purposes of 28 U.S.C. § 1915(g) is the claim that he has been denied prescribed seizure medication by Nurse Kathy, Nurse Bonnie, Nurse Helen and Dr. Fatoki. This allegation at least arguably states viable claims under the Eighth Amendment, which imposes a duty on prison officials to provide “humane conditions of confinement” by ensuring that inmates receive adequate food, clothing, shelter, and medical care. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). His remaining allegations are either remote in time or do not demonstrate an imminent danger of serious physical injury. *See Ciarpaglini*, 352 F.3d at 330; *see also Heimermann v. Litscher*, 337 F.3d 781 (7th Cir. 2003).

Although this lone claim passes muster under the court’s lower standard for screening, Godwin will now have to present admissible evidence permitting a reasonable trier of fact to conclude that defendants acted with deliberate indifference to a serious medical need, which is a high standard indeed. Inadvertent error, negligence or even gross negligence are all insufficient grounds to invoke the Eighth Amendment. *Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996). In particular, it will be Godwin’s burden to prove: (1) his medical condition is serious; and (2) that the defendants knew his medical condition was serious and deliberately ignored his need for this medication. Godwin’s

claim concerning his medical care may also require him to provide credible, expert testimony from a physician.

ORDER

IT IS ORDERED that:

- 1) Plaintiff Roger Dale Godwin's request for leave to proceed under 28 U.S.C. § 1915(a) is GRANTED on his claim that he has been denied seizure medication by Nurse Kathy, Nurse Bonnie, Nurse Helen and Dr. Fatoki. Leave to proceed on Godwin's remaining claims is DENIED.
- 2) Having been found eligible for leave to proceed *in forma pauperis*, Godwin shall pay the filing fee of \$350 in monthly installments pursuant to 28 U.S.C. § 1915(b)(2). This court will notify the Sheriff or Jail Administrator at his institution of that institution's obligation to deduct payments until the filing fee has been paid in full.
- 3) The clerk's office will prepare summons and the U.S. Marshal Service shall effect service upon the following defendants employed at the Sauk County Jail: Nurse Kathy, Nurse Bonnie, Nurse Helen and Dr. Fatoki.
- 4) For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.
- 5) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

Entered this 10th day of June, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge